

### **REMARKS**

This responds to the Office Action mailed on June 5, 2009.

Claims 18, 26, 35 and 44 are hereby amended. No claims are canceled. No claims are newly added. As a result, claims 18-22, 24-30, 32-39, 41-48 and 50-52 are now pending in this application.

Support for the claim amendments can be found within Applicants' specification as filed, for example, at paragraphs [0024] and [0031].

#### **§ 101 Rejection of the Claims**

Claims 18-22, 24-30, 32-39, 41-48 and 50-52 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claim 18 has been amended to recite, "bid database storing the bid," as suggested by the Examiner. In addition, claim 18 has been amended to positively recite a "processor." Applicants assert that, as amended, claim 18 and those claims dependent upon claim 18 (claims 19-22 and 24-25) overcome the rejection under § 101.

Claim 26 has been amended to recite a "processor." As such, claim 16 is sufficiently tied to a statutory class of invention. Applicants assert that claim 26, as amended, and claims 27-30 and 32-34 overcome the rejection under § 101.

Claim 35 has been amended as suggested by the Examiner. As such, Applicants respectfully assert that claim 35 and claims 36-39 and 41-43 overcome the rejection under § 101.

Claim 44 has been amended to positively recite "one or more processors." As such, claim 44 and claims 45-48 and 50-52 overcome the rejection under § 101.

Applicants assert that the claims as amended overcome the rejections under 35 U.S.C. § 101. Accordingly, Applicants respectfully request that the rejections be withdrawn and the claims allowed.

#### **§ 112 Rejection of the Claims**

Claims 18-22, 24-25, 44-48 and 50-52 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claim 18 has been amended to expressly state, “one or more processors configured to execute instructions stored in memory.” As such, Applicants assert that the structural components that perform the claimed functions are sufficiently described and claimed, and one skilled in the art would have no problem ascertaining the scope of protection sought by Applicants. Accordingly, Applicants assert that the rejections of claim 18 and claims 19-22 and 24-25 under § 112 is overcome.

Claim 44 has been amended to expressly indicate that one or more processors are used to implement the claimed “merchandise posting mechanism,” “bid receiver,” and “bid validator.” As such, Applicants assert that the rejections of claims 44-48 and 50-52 have been overcome.

Applicants assert that the claims as amended overcome the rejection under 35 U.S.C. § 112, second paragraph. Accordingly, Applicants respectfully request that the rejections be withdrawn and the claims allowed.

### § 103 Rejection of the Claims

Claims 18-19, 22, 24, 26-27, 30, 33, 35-36, 39, 41-42, 44-45, 48 and 50-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Woolston (U.S. Patent No. 5,845,265) in view of Fraser et al. (U.S. Patent No. 5,329,589; hereinafter “Fraser”) and further in view of Anderson (U.S. Patent No. 4,319,336; hereinafter “Anderson”).

Although Applicants believe that the previously presented claims defined over the cited prior art, Applicants have amended claims 18, 26, 35 and 44 to expedite the prosecution of the present application. As amended, claim 18 recites as follows:

**a bid validation means** for examining and validating a characteristic of the bid during and prior to a close of the auction, and **for ensuring that the bid amount is credible in view of a current high bid**, the characteristic of the bid being a form of bid information, and the validating of the characteristic includes ensuring that the bid information accords with a specific form of the bid information that is defined by the bid format

Claims 26, 35 and 44 have been amended similarly, and include similar claim elements to that set forth above.

The combination of Woolston, Fraser and Anderson does not render claim 18 obvious because none of the cited references describes or suggests the claim element set forth above. In

the Office Action of June 5, 2009, the Examiner relies specifically on the combination of Fraser and Anderson for describing the claimed “bid validation means” and its respective function. Applicants submit that Fraser, Anderson, and/or the combination, does not sufficiently describe or suggest the claimed elements of claim 18 to render claim 18 obvious.

Fraser states at line 17 of column 14 that, “The communications system would validate the bids and provide them to the auctioneer ...” As such, Fraser describes validating a bid, but provides no additional detail as to what it means to validate a bid. Specifically, Fraser does not describe validating a bid to “ensur[e] that ... bid information accords with a specific form of the bid information that is defined by [a] bid format.” Moreover, Fraser does not describe or suggest “ensuring that [a] bid amount is credible in view of a current high bid,” as is claimed in amended claim 18.

Anderson does not describe validating bids, but instead describes a data entry mechanism that verifies that the number of characters entered for a particular field is between a minimum and maximum number of characters expected for that particular field. “The minimum and maximum values pertain to the number of characters that may be entered. A decimal point and each numeric digit counts as a character.” (Anderson; Col. 31, Lines 11-14). Accordingly, the analysis described by Anderson would not distinguish between the two text strings, “10000.00” and “1.000000”. According to Anderson, each of the two example eight character text strings would be considered as meeting the same minimum and maximum requirements, despite the difference in the two values being equivalent to “999,999.” Therefore, Anderson cannot fairly be said to ensure that “bid information accords with a specific form of the bid information that is defined by [a] bid format,” as that concept is claimed in described by Applicants. Moreover, Anderson does not describe or suggest “ensuring that [a] bid amount is credible in view of a current high bid,” as is claimed.

Consequently, because Fraser and Anderson, singularly or combined, do not describe or suggest all of the claimed elements, the combination of Woolston, Fraser and Anderson does not render claim 18 obvious. Applicants submit that claims 26, 35 and 44 are not obvious in view of the cited references at least for the same reasons as claim 18 is not obvious. Moreover, as each of claims 19-22, 24-25, 27-30, 32-34, 36-39, 41-43, 45-48 and 50-52 depend from one of claims

18, 26, 35 or 44, these claims are also not obvious in view of the combination of Woolston, Fraser and Andersen.

Claims 20, 28, 37 and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Woolston in view of Fraser in view of Anderson in view of Huberman (U.S. Patent No. 5,826,244). Applicants submit that the claims are not obvious in view of the cited combination of references at least for the same reason that claim 18 is not obvious in view of Woolston, Fraser and Anderson. Stated differently, Huberman does not describe that which is described above as missing from Woolston, Fraser and Anderson.

Claims 21, 29, 38 and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Woolston in view of Fraser in view of Anderson in view of Brown (U.S. Patent No. 5,794,219). Applicants submit that the claims are not obvious in view of the cited combination of references at least for the same reason that claim 18 is not obvious in view of Woolston, Fraser and Anderson. Stated differently, Brown does not describe that which is described above as missing from Woolston, Fraser and Anderson.

Claims 25, 34, 43 and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Woolston in view of Fraser in view of Anderson in view of Mackinnon, D. J. ("Playing the Auction Game"; SU2 Edition, Toronto Star, Ont.: Oct. 4, 1987. pg E.1, hereinafter; "Mackinnon"). Applicants submit that the claims are not obvious in view of the cited combination of references at least for the same reason that claim 18 is not obvious in view of Woolston, Fraser and Anderson. Stated differently, Mackinnon does not describe that which is described above as missing from Woolston, Fraser and Anderson.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2014 to facilitate prosecution of this application.


If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402--0938  
(408) 660-2014


Date 07 December 2009

By

  
Nathan P. Elder  
Reg. No. 55,150

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 7th day of December, 2009.

Chris Bartl  
Name

  
Signature